IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

Crl.Rev.Pet.No. 525 of 1999()

CRA 13/1996 OF SESSIONS COURT, THRISSUR.
C.C.473/94 OD JFCM III, THRISSUR.

REVN. PETITIONER(S):

VISWANATHA PILLAI,
S/O.DAMODARAN, THEKKETHIL HOUSE,
VENMANI VILLAGE,
CHENGANNOOR TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.K.MADHUSOODHANAN NAIR

RESPONDENT(S):

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI.C.K.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.R.P. No.525 of 1999

Dated 27th day of March, 2007.

O R D E R

The revision petitioner was convicted and sentenced to undergo simple imprisonment for one year under Section 170 of Indian Penal Code and to pay a fine of Rs.500/- under Section 155 of the Railway Act and in default to undergo simple imprisonment for one month. He was also sentenced to undergo simple imprisonment for three months under Section 137 of the Railway Act and the sentences were ordered to run concurrently by the Magistrate.

2. The revision petitioner challenged the above conviction and sentence before the Sessions Court. Learned Sessions Judge found that there is no evidence to establish the offence under Sections 155 and 137 of the Railway Act and the accused was found not guilty of such offence. The conviction and sentence passed under the said sections are set aside. The conviction and sentence passed against accused under Section 170 IPC was confirmed by the learned Sessions Judge and hence, this revision.

3. According to prosecution, the accused pretended to hold particular office as a public servant, namely, Vigilance Squad, knowing that he does not hold such office, checked the ticket and the baggage of the passengers in a compartment in a train under the colour of such offence and thereby committed an offence under Section 170 IPC. He had done this act by showing a false identity card in S.4 compartment of the Thiruvananthapuram-Delhi bound train (K.K.Express). The alleged incident occurred between Trichur and Wadakancherry railway stations at about 4.45 p.m. The crime was detected by PW1, the ticket examiner, who produced the accused along with Ext.P2 before, PW2. A crime was registered at the Railway Police Station, Palakkad as Ext.P4.

4. The crime was transferred to the Railway Police Station at Trichur and the FIR was re-registered. The accused was also not having a ticket. His baggage was examined by PW2 and it contained a gold chain, money etc. and those were taken to the police station by PW2 and produced before the Head Constable PW4 who seized the article under Ext.P5

mahazar. The accused was also arrested by PW5, the Sub Inspector on his production by the Police Constable. PW6 conducted the investigation and laid charge against accused.

5. On an analysis of the evidence, the trial court found that accused committed various offences alleged against him. The Sessions Judge, however, found that there is no evidence to establish offence under Sections 155 and 137 of the Railway Act. But the evidence disclosed an offence under Section 170 IPC and conviction and sentence passed against the revision petitioner under Section 170 IPC was confirmed.

6. Learned Sessions Judge held that the oral evidence of PW1 to the effect that the appellant was checking tickets and baggage of the passengers was supported by contemporary statement made by him to PW2. It is also supported by Ext.P2 transit intimation. Learned Sessions Judge also held that Ext.P1 seized from the possession of the revision petitioner also supports the oral evidence of PW1. He observed that PW1 is a disinterested railway employee and a perusal of the statement of the accused under Section 313 Cr.P.C. and the

cross examination of PW1 did not show that PW1 had any motive to speak against the appellant.

7. On a perusal of the records and evidence, I find that the above findings are erroneous and those are against the evidence given in this case. According to lower appellate court, Ext.P1 was seized from possession of the accused, which he was holding and showing to the passengers, as revealed from the evidence of PW1. It is true that PW1 stated that Ext.P1 identity card was shown to the passengers for inspecting the baggage. A reading of Exts.P4, P6, P5 would reveal that Ext.P1 was not in the hands of accused when he allegedly committed the crime. In Ext.P4, it is clearly stated that the bag, which was found in possession of the accused, was opened and examined by PW2, the Police Constable when he found that the bag contained Ext.P1 identity card.

8. Therefore, the evidence given by PW1 that accused was holding the identity card in his hand cannot be accepted, especially since he had no case that the card was kept back at any time in the bag which was taken from

possession of the accused. Ext.P1 card appears to be the trump card of the prosecution, according to which, accused had committed the offence personating himself under the guise of an Inspector showing Ext.P1 to the passengers. The evidence given by PW1 to that effect is contradicted to certain extent by the evidence given by PW2 and Exts.P4 and P6. It is also relevant to note that though PW1 stated that Ext.P1 was found in the hands of accused and this evidence is a material piece of evidence which is incriminating in nature, it was not put to the accused while he was questioned under Section 313 Cr.P.C.

9. In such circumstances, the fact that accused was found holding the card cannot be taken into account as a material incriminating evidence, to convict the accused. The lower appellate court committed an illegality in placing reliance upon such circumstance to convict accused, in the absence of questioning regarding the same under Section 313 Cr.P.C. It is also to be stated that the evidence given by PW1 that the accused was holding Ext.P1 is contrary to the contents of the FIR itself. Thus, the crucial finding is contrary to the evidence

disclosed by the records in this case.

10. In this context, it is also relevant to note that there was a major contradiction in evidence from the very inception. A perusal of Exts.P2 and P4 will establish this fact. Ext.P2 is a transit intimation which is alleged to have been given by PW1 to PW2. It reveals that when PW1 checked the accused, he showed one identity card and he got doubt about his identity. It is because of this doubt that he had taken the accused to PW2 for necessary action. But the first information report would show that PW2 opened the bag and in the bag he found Ext.P1. In such circumstances, no validity can be attached to the evidence of PW1 regarding the possession of Ext.P1 in the hands of the accused and part of his evidence that the accused was showing this card Ext.P1 to passengers etc. cannot be accepted. Both the courts committed an illegality in entering a finding contrary to the evidence disclosed from the records.

11. It is also relevant to note that though the tickets and baggage of the passengers were examined and checked

by the accused showing the identify card, none of the passengers were examined. PW2 has a specific case that no passenger has made any allegation to him. So also, PW1 deposed in court that no passenger complained to him regarding the offence. Therefore, the evidence of PW1 ought to have been examined with greater care and caution.

12. The lower appellate court also grievously erred in holding that a perusal of the statement given by accused under Section 313 does not show that PW1 had any motive against accused. Specific motive was alleged against PW1. According to accused, he was in search for one of his shoes which he had kept on the floor of the compartment was missing. There was lot of bags and boxes on the floor. When he started searching for the shoe among the bags and boxes, one of the passengers was annoyed and he had left the place sarcastically stating that 'flying squad' had come. It was thereafter that PW1 came to the place and started raising his voice and altercation followed and he was caught by the police.

13. The ticket examiner approached him and he also

started raising his voice and there was an altercation between the two. Thereafter, two police men came there and he was caught and his bag and the box were examined by them. During such examination, they had seen an identity card. The statement given by accused under Section 313 Cr.P.C. regarding the circumstances under which and the place from which Ext.P2 was recovered are more or less supported by Ext.P4, the first information statement. In spite of this, the court has committed an error in holding that the statement given under Section 313 do not reveal any motive from PW1. According to the accused because of the altercation between PW1 and himself that a false case was foisted against him.

14. The court below ought to have examined the evidence of PW1 with greater care and caution. Had this been done, I am confident that the lower court would have noticed the contradictions regarding the possession of Ext.P1 by the accused and the circumstances under which it was seized which will belie the evidence given by PW1 regarding the manner in which offence was committed by the accused.

15.The court framed a charge against accused for offence under Section 170 IPC, but there is absolutely nothing in the charge to show that the accused pretended himself to be a public servant. Necessary ingredients to constitute an offence under Section 170 IPC are absent in the charge framed by the court. It is only stated therein that the accused examined the baggage and tickets showing Ext.P1. There is no allegation in the charge that he was pretending himself to be a public servant.

16. Ext.P1 does not reveal that the accused had forged Ext.P1 to make it appear that he is a public servant working in the Railway Department but, on the other hand, it shows from the seal affixed was of 'Defence Services Inspector'. Therefore, the prosecution failed to establish that the accused committed any of the offences alleged against him and the conviction and sentence passed against the revision petitioner on the basis of the shabby evidence without noticing the material is erroneous and clearly illegal and unsustainable.

17. In the result, the conviction and sentence passed

against petitioner under Section 170 IPC are set aside. The revision petitioner/accused is found not guilty and he is acquitted of offence under Section 170 IPC. He is set at liberty forthwith.

This Revision Petition is allowed.

K.HEMA, JUDGE.

Krs